

No. 22-56012

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FEDERAL TRADE COMMISSION,

Plaintiff-Appellee,

v.

TRIANGLE MEDIA CORPORATION, et al.,

Defendants-Appellees.

v.

WELLS FARGO & COMPANY and WELLS FARGO BANK, N.A.,
proposed Intervenor,

Movants-Appellants,

THOMAS W. MCNAMARA,

Receiver-Appellee.

On Appeal from the United States District Court
for the Southern District of California

No. 3:18-cv-01388-LAB-WVG

Hon. Larry Alan Burns

**RECEIVER-APPELLEE'S
SUPPLEMENTAL EXCERPTS OF RECORD**
Volume 2 of 2 – Pages 2-SER-253 to 2-SER-316

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRIANGLE MEDIA
CORPORATION; JASPER RAIN
MARKETING LLC; HARDWIRE
INTERACTIVE INC.; and BRIAN
PHILLIPS,

Defendants.

Case No.: 18-cv-1388-MMA (NLS)

**PLAINTIFF FEDERAL TRADE
COMMISSION'S NOTICE OF
MOTION AND MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT**

Judge: Hon. Michael M. Anello
Hearing Date: December 3, 2018
Hearing Time: 2:30 p.m.
Courtroom: 3D

FTC's Motion for Leave to File Amended Complaint
Case No. 18-cv-1388-MMA (NLS)

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Please take notice that on December 3, 2018, at 2:30 p.m., or as soon
3 thereafter as counsel may be heard, in Courtroom 3D of the United States District
4 Court for the Southern District of California, located at 221 West Broadway, San
5 Diego, CA 92101, Plaintiff Federal Trade Commission (“FTC”), will and hereby
6 does move the Court pursuant to Rule 15(a) of the Federal Rules of Civil
7 Procedure for an order granting leave to file the FTC’s Amended Complaint for
8 Permanent Injunction and Other Equitable Relief (“Amended Complaint”).¹

9 This motion is based on this notice of motion and motion, the accompanying
10 memorandum of points and authorities, exhibits hereto, the files and records in this
11 case, and such further evidence and argument as may be presented at any hearing
12 on this motion.

13 On October 12, 2018, FTC counsel emailed a copy of the proposed amended
14 complaint to defense counsel, and requested the parties’ consent pursuant to Fed.
15 R. Civ. P. 15(a)(2) to the filing of the proposed amended complaint. As of the
16 filing of this motion, FTC counsel has not received a response to that request.

17
18 Dated: October 19, 2018

Respectfully submitted,

19
20 /s/Samantha Gordon
21 Samantha Gordon
22 Attorney for Plaintiff
23 Federal Trade Commission
24

25 ¹ A copy of the FTC’s Amended Complaint along with a redline copy, are
26 attached to this motion as Exhibit 1.

On September 24, 2018, FTC counsel submitted to Magistrate Judge Stormes a Rule 26(f) report, which was stipulated, and stated, in part, that FTC counsel anticipated moving to amend the complaint by October 31, 2018. At present, there are no deadlines related to the amendment of the pleadings.

Since filing its Complaint, the FTC has identified an additional company that is part of Defendants’ common enterprise and an additional individual who controlled that enterprise and, in particular, the illegal conduct at issue in this case. The additional individual the FTC seeks to add as a defendant is Devin Keer, who was been involved in this litigation already. Earlier in this case, proposed defendant Keer submitted multiple declarations regarding the operations of Defendant Hardwire Interactive Inc. (Dkt. # 26.2, 35.1). The Court noted in its opinion granting the preliminary injunction that “Keer’s role was the ‘mastermind, marketer, and businessman.’” (Dkt. #74, at 21.) The additional company that the FTC would add as a defendant in its Amended Complaint—Global Northern Trading Ltd.—is subject to the Court-ordered Receivership and has had its assets frozen by virtue of the Receiver’s determination that it is appropriately part of the Receivership. (*See* Preliminary Report of Temporary Receiver, Dkt. #30, at 5.) The company played an instrumental role in the common enterprise, receiving consumer payments via the other corporate Defendants, paying the operation’s expenses, and transferring the remaining funds to Defendant Hardwire Interactive Inc. (*See* Dkt. #74, at 23.)

The FTC seeks to amend the Complaint to name these two additional defendants.

II. Argument

Rule 15 of the Federal Rules of Civil Procedure provides that a “court should freely give leave” to amend a complaint “when justice so requires.” Fed. R.

FTC's Motion for Leave to File Amended Complaint
Case No. 18-cv-1388-MMA (NLS)

1 Civ. P. 15(a)(2); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). The policy
 2 favoring leave to amend a complaint is “to be applied with extreme liberality.”
 3 *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)
 4 (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th
 5 Cir.1990)); *see also Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051
 6 (9th Cir. 2003) (quoting *Owens*, 244 F.3d at 712). As the Supreme Court has
 7 stated:

8 In the absence of any apparent or declared reason—such as undue
 9 delay, bad faith or dilatory motive on the part of the movant, repeated
 10 failure to cure deficiencies by amendments previously allowed, undue
 11 prejudice to the opposing party by virtue of allowance of the
 amendment, futility of amendment, etc.—the leave sought should, as
 the rules require, be “freely given.”

12 *Foman*, 371 U.S. at 182.

13 Here, there is no reason to deny the FTC’s request for leave to file its
 14 Amended Complaint. This is the FTC’s first request for leave to amend, and at
 15 present there are no deadlines for a hearing on a motion to amend the pleadings or
 16 add parties. In addition, no prejudice will result to Defendants from the filing of
 17 the Amended Complaint. FTC counsel notified the Court and Defendants of its
 18 intent to seek leave to amend in a timely fashion. A brief filed within three weeks
 19 of its filing of the Complaint specifically referred to counsel’s intent to amend the
 20 complaint and to add Keer as a defendant. (Dkt. #28 at 14 n. 10.) Similarly, the
 21 parties received prompt notice of proposed defendant Global Northern Trading
 22 Ltd.’s involvement in this litigation, thanks to the Receiver’s designation of that
 23 entity as part of the Receivership. (Dkt. #30 at 5.) Discovery is just commencing,
 24 leaving Defendants ample time to obtain discovery relating to the Amended
 25 Complaint. Finally, there is no bad faith on the part of the FTC. The Amended
 26 Complaint is based on evidence recently obtained by the FTC, and the FTC’s

1 Amended Complaint seeks to enjoin additional parties responsible for the illegal
2 conduct at the core of this case.

3 **III. Conclusion**

4 For the foregoing reasons, the FTC respectfully requests that the Court grant
5 the FTC leave to file the attached Amended Complaint.

6
7 Dated: October 19, 2018

8
9 Respectfully submitted,

10 /s/Samantha Gordon
11 Samantha Gordon
12 Attorney for Plaintiff
13 Federal Trade Commission
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FTC's Motion for Leave to File Amended Complaint
Case No. 18-cv-1388-MMA (NLS)

CERTIFICATE OF SERVICE

My name is Samantha Gordon. I am an attorney employed by the Federal Trade Commission, 230 South Dearborn Street, Suite 3030, Chicago, Illinois 60604. On Friday, October 19, 2018, I filed the attached Plaintiff Federal Trade Commission's Notice of Motion and Motion For Leave to File Amended Complaint and served it:

by FedEx upon:

Global Northern Trading Ltd.
205-2964 Trethewey St.
Abbotsford, BC V2T 6P4, Canada
Proposed Defendant

and by the Court's CM/ECF filing system upon:

Frederick K. Taylor (fred.taylor@procopio.com)
Nicholas Kawuka (nicholas.kawuka@procopio.com)
Matthew B. Shields (matthew.shields@procopio.com)
Attorneys for Defendants Triangle Media Corporation, Jasper Rain Marketing LLC, and Brian Phillips

Ari N. Rothman (anrothman@venable.com)
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Attorneys for Defendant Hardwire Interactive, Inc. and proposed Defendant Devin Keer

Andrew W. Robertson (arobertson@mcnamarallp.com)
Edward Chang (echang@mcnamarallp.com)
Attorneys for Court-appointed Receiver Thomas W. McNamara

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of October, 2018, at Chicago, Illinois.

/s/ Samantha Gordon

Samantha Gordon

FTC's Motion for Leave to File Amended Complaint
Case No. 18-cv-1388-MMA (NLS)

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2 General Counsel

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

TRIANGLE MEDIA CORPORATION, a
Delaware corporation, also doing business
as Triangle CRM, Phenom Health, Beauty
and Truth, and E-Cigs;

JASPER RAIN MARKETING LLC, a
California limited liability company, also
doing business as Cranium Power and
Phenom Health;

HARDWIRE INTERACTIVE INC., a
British Virgin Islands corporation, also
doing business as Phenom Health, Beauty
and Truth, and E-Cigs;

GLOBAL NORTHERN TRADING
LIMITED, a Canadian corporation;

Case No.: 18-cv-1388-MMA (NLS)
FIRST AMENDED COMPLAINT

**FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Judge: Hon. Michael M. Anello

1 BRIAN PHILLIPS, individually and as an
2 officer of Triangle Media Corporation;

3 and
4

5 DEVIN KEER, individually and as an
6 officer of Triangle Media Corporation and
7 Hardwire Interactive,

8 Defendants.

9 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), for its
10 Complaint alleges:

11 1. The FTC brings this action under Section 13(b) of the Federal Trade
12 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), Section 5 of the Restore Online
13 Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and Section 918(c) of the
14 Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), to obtain temporary,
15 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
16 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
17 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC
18 Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section 907(a) of the
19 EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R.
20 § 1005.10(b).

21 **JURISDICTION AND VENUE**
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1 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
2 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b); and Section 5(a) of ROSCA, 15
3 U.S.C. § 8404(a).

4
5 3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1),
6 (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

7
8 **PLAINTIFF**

9 4. The FTC is an independent agency of the United States Government created
10 by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15
11 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
12 commerce. Additionally, the FTC enforces ROSCA, 15 U.S.C. §§ 8401-05, which
13 prohibits certain methods of negative option marketing on the Internet, as well as the
14 EFTA, 15 U.S.C. § 1693 *et seq.*, which regulates the rights, liabilities, and
15 responsibilities of participants in electronic fund transfer systems.

16
17
18 5. The FTC is authorized to initiate federal district court proceedings, by its
19 own attorneys, to enjoin violations of the FTC Act, ROSCA, and the EFTA, and to secure
20 such equitable relief as may be appropriate in each case, including rescission or
21 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
22 ill-gotten monies. 15 U.S.C. §§ 53(b), 8404, and 1693o(c).

23
24
25 **DEFENDANTS**

26 6. Defendant **Triangle Media Corporation** (“Triangle Media”), also doing
27 business as Triangle CRM, Phenom Health, Beauty and Truth, and E-Cigs, is a Delaware
28

1 corporation registered at 108 West 13th Street, Wilmington, Delaware 19801. Its
2 principal place of business was 1350 Columbia Street, San Diego, California 92101 until
3 May 17, 2018, when it filed paperwork with the California Secretary of State changing its
4 principal place of business to 4519 George Road, Tampa, Florida 33634. At all times
5 material to this complaint, acting alone or in concert with others, Triangle Media
6 Corporation has advertised, marketed, distributed, or sold skincare products, electronic
7 cigarettes, and dietary supplements to consumers throughout the United States. Triangle
8 Media transacts or has transacted business in this district and throughout the United
9 States.
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13 7. Defendant **Jasper Rain Marketing LLC** (“Jasper Rain”), also doing
14 business as Cranium Power and Phenom Health, is a California limited liability company
15 registered and with its principal place of business at 4370 La Jolla Village Drive, Suite
16 400, San Diego, California 92122. At all times material to this complaint, acting alone or
17 in concert with others, Jasper Rain has advertised, marketed, distributed or sold dietary
18 supplements to consumers throughout the United States. Jasper Rain transacts or has
19 transacted business in this district and throughout the United States.
20
21

22 8. Defendant **Hardwire Interactive Inc.** (“Hardwire Interactive”), also doing
23 business as Phenom Health, Beauty and Truth, and E-Cigs, is a British Virgin Islands
24 corporation with its principal place of business at R.G. Hodge Plaza 3/Floor, Upper Main
25 Street, Wickham’s Cay 1, Road Town, Tortola, British Virgin Islands. At all times
26 material to this complaint, acting alone or in concert with others, Hardwire Interactive
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28

1 has advertised, marketed, distributed or sold skincare products, electronic cigarettes, and
2 dietary supplements to consumers throughout the United States. Hardwire Interactive
3 transacts or has transacted business in this district and throughout the United States.
4

5 9. Defendant **Global Northern Trading Limited** (“Global Northern”), is a
6 Canadian corporation with its principal place of business at 205-2964 Trethewey St.,
7 Abbotsford, British Columbia, V2T 6PA, Canada. At all times material to this complaint,
8 acting alone or in concert with others, Global Northern has advertised, marketed,
9 distributed or sold skin care products, electronic cigarettes, and dietary supplements to
10 consumers throughout the United States. Global Northern transacts or has transacted
11 business in this district and throughout the United States.
12
13

14 10. Defendant **Brian Phillips** is an owner and officer of Triangle Media. At all
15 times material to this complaint, acting alone or in concert with others, he has formulated,
16 directed, controlled, had the authority to control, or participated in the acts and practices
17 of **Triangle Media, Jasper Rain, Hardwire Interactive, and Global Northern,**
18 including the acts and practices set forth in this Complaint. Defendant Phillips resides in
19 this district and, in connection with the matters alleged herein, transacts or has transacted
20 business in this district and throughout the United States. Among other things, Defendant
21 Phillips has had the authority to control the advertising and marketing of Defendants’
22 products, including by registering websites used to track Defendants’ online advertising
23 and marketing activities; the processing of payments from consumers victimized by
24 Defendants’ practices, including by having signatory authority over bank accounts used
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1 to receive and process consumer payments; and Defendants' customer service operations,
2 including Defendants' restrictive cancellation and refund policies.

3
4 11. Defendant **Devin Keer** has been an owner and officer of Triangle Media
5 Corporation and Hardwire Interactive. At all times relevant to this complaint, acting
6 alone or in concert with others, he has formulated, directed, controlled, had the authority
7 to control, or participated in the acts and practices of **Triangle Media, Jasper Rain,**
8 **Hardwire Interactive,** and **Global Northern,** including the acts and practices set forth
9 in this Complaint. Defendant Keer, in connection with the matters alleged herein,
10 transacts or has transacted business in this district and throughout the United States.
11
12 Among other things, Defendant Keer has had the authority to control the advertising and
13 marketing of Defendants' products, including overseeing the Corporate Defendants'
14 overall business strategy and operations, paying for registration of the deceptive websites,
15 entering into contracts with advertisers, and managing distribution and fulfillment of
16 Defendants' products.
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19
20 12. Defendants **Triangle Media, Jasper Rain, Hardwire Interactive,** and
21 **Global Northern** (collectively, "Corporate Defendants") have operated as a common
22 enterprise while engaging in the deceptive and unfair acts and practices and other
23 violations of the law alleged below. Defendants have conducted the business practices
24 described below through an interrelated network of companies that have common
25 ownership, officers, managers, business functions, employees, and office locations and
26 that use common business names and commingle funds. Because these Corporate
27
28

1 Defendants have operated as a common enterprise, each of them is jointly and severally
2 liable for the acts and practices alleged below. Defendants Phillips and Keer have
3 formulated, directed, controlled, had the authority to control, or participated in the acts
4 and practices of the Corporate Defendants that constitute the common enterprise.
5

6 **COMMERCE**

7
8 13. At all times material to this complaint, Defendants have maintained a
9 substantial course of trade in or affecting commerce, as “commerce” is defined in Section
10 4 of the FTC Act, 15 U.S.C. § 44.
11

12 **DEFENDANTS’ BUSINESS PRACTICES**

13 14. Defendants advertise, market, promote, distribute, and sell skincare
14 products, electronic cigarettes, and dietary supplements online. Defendants claim to offer
15 trials of these products for just the cost of shipping and handling, typically \$4.95 or less.
16 Instead, Defendants charge consumers who accept the trial offers as much as \$98.71 for a
17 single shipment and enroll them in a continuity program costing the same amount on a
18 monthly basis. Additionally, Defendants frequently also charge consumers for additional
19 products and enroll consumers in continuity programs related to these additional
20 products, all without the consumers’ knowledge or consent. Consumers who discover
21 Defendants’ charges and seek a refund often find that they are unable to get their money
22 back because of Defendants’ undisclosed refund restrictions. Defendants have brought in
23 tens of millions of dollars through their deceptive trial offers.
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Defendants' Deceptive Trial Offers

15. Defendants advertise through third-party websites, blog posts, banner advertisements, and surveys, offering consumers a “trial” of products such as “Wrinkle Rewind,” “ProVapor,” “Cerebral X,” “Test X Core,” and “Garcinia Clean XT.” These advertisements often say that consumers can receive a “trial” for just the cost of shipping and handling. When consumers click on these advertisements, they are directed to Defendants’ websites, which include findbeautyandtruth.com, trycerebralx.com, tryphenomcore.com, tryprovapor.com, and trygarciniaclean.com.

16. Defendants’ websites offer consumers a “RISK FREE” trial of one of Defendants’ products. The websites create a sense of urgency by telling consumers there is a limited supply of the trial product and that they need to act quickly. Representative statements include:

- Warning: Due to extremely high media demand, there is limited supply of [PRODUCT] in stock as of [today’s date]. HURRY!
- ONLY [X] NUMBER OF TRIALS AVAILABLE NOW!
- ATTENTION: Due to high demand from recent media coverage we can no longer guarantee supply. As of [TODAY’S DATE] we currently have product in-stock and will ship within 24 hours of purchase.

The websites also prominently display the logos of news organizations such as CBS News, NBC, Fox News, and CNN, suggesting that these products have been featured on those outlets.

1 17. Consumers who are interested in the trial offer are asked to provide their
2 contact information. Upon doing so, consumers are directed to a payment page on which
3 Defendants request their credit or debit card information and represent that consumers
4 need to pay only a shipping and handling charge, typically \$4.95 or less, to receive a trial
5 of Defendants' product. Defendants' websites prominently state that the "Total" cost of
6 the product is equal to the cost of shipping and handling. As shown in the screenshot
7 below of Defendants' website for Cerebral X, for example, Defendants list the shipping
8 cost of \$4.95 and highlight the "Total," also \$4.95, in yellow:
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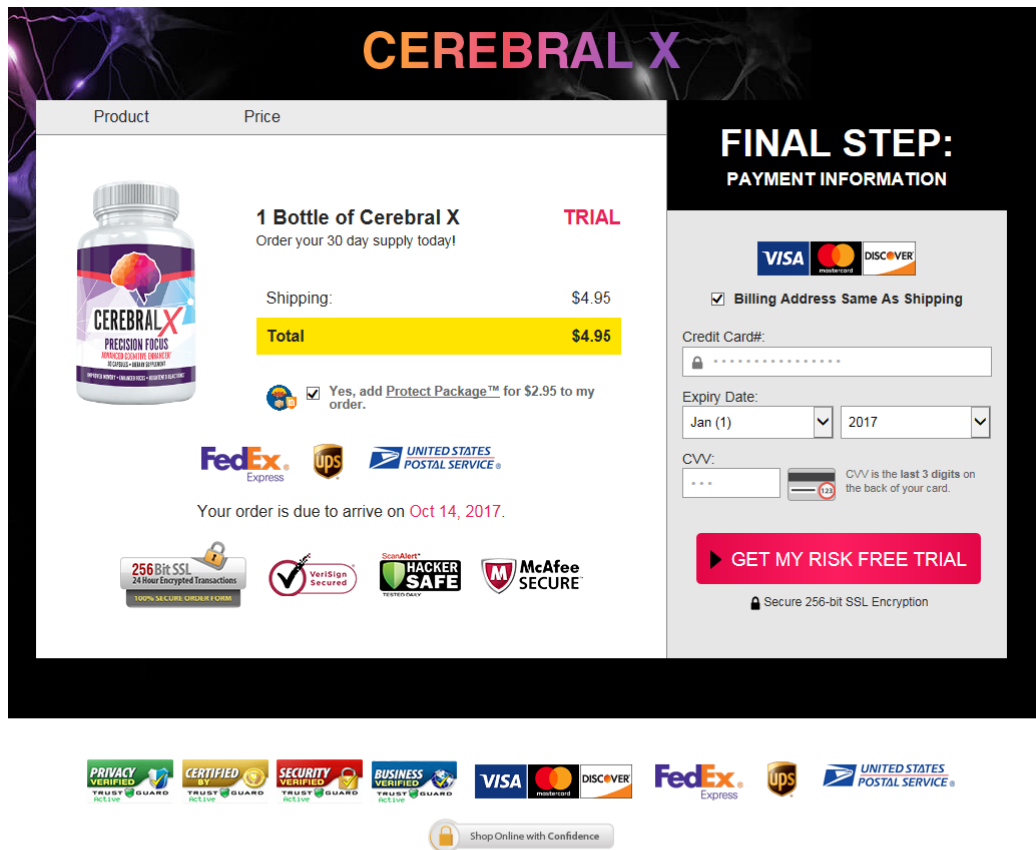


Figure 1

18. Similarly, in the following screenshots of Defendants' website for Garcinia Clean XT as depicted on a mobile device, Defendants list the "Price" of the product as \$0.00, highlighted in green, the \$4.95 shipping and handling charge, and a "Total" of \$4.95 in bold, followed by a request for billing information when consumers scroll down on their mobile device:

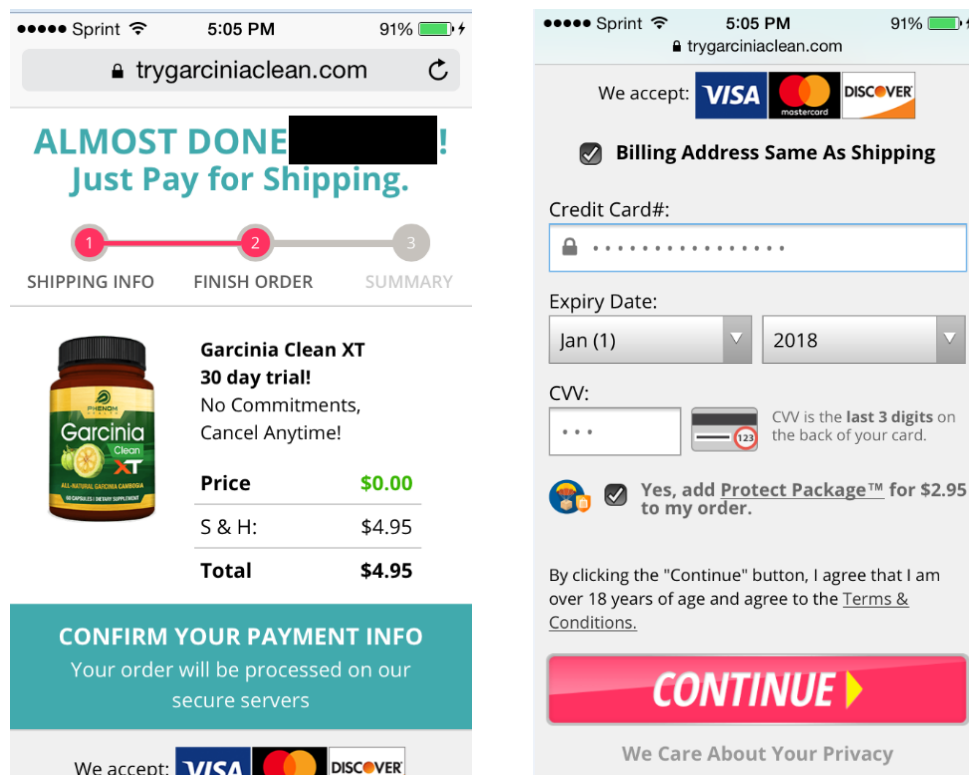


Figure 2

19. Once consumers enter their billing information, they are asked to place their order by clicking a brightly colored button labeled either “GET MY RISK FREE TRIAL” or “CONTINUE.”

20. Unbeknownst to consumers, 15 days after they click “GET MY RISK FREE TRIAL” or “CONTINUE,” Defendants will charge consumers the full price of the product—as much as \$98.71.

21. Defendants also enroll consumers who accept the trial offer into a continuity program. Under the continuity program, Defendants send consumers additional shipments of the product each month and charge consumers’ credit or debit cards the full price of each product shipped.

1 22. Consumers typically only learn that the trial was not free and that they have
2 been enrolled in a continuity program when they see Defendants' monthly charges on
3 their credit card or bank statements.
4

5 23. As Figs. 1 and 2 illustrate, Defendants either hide the terms of their offer in
6 barely discernable print far below the colorful graphics and text where consumers input
7 their personal and payment information and continue with their purchase, or bury them in
8 a separate "Terms & Conditions" hyperlink. Those terms typically reveal that the
9 consumer has a limited time to cancel the trial, usually 15 days, or the consumer will be
10 charged the full price of the product. The terms also state that the consumer will receive
11 and be charged for additional shipments of the product every 30 days until they cancel.
12

13 24. On the desktop page depicted in Fig. 1, consumers would not encounter
14 these terms unless they were to look closely at the small, faint type far below where they
15 enter their payment information and click "GET MY RISK FREE TRIAL." On the
16 mobile pages depicted in Fig. 2, to see the terms, consumers would need to click on the
17 separate "terms and conditions" hyperlink or scroll past the large, brightly colored
18 "CONTINUE" button. But there is nothing on the billing screen in Fig. 2 to indicate that
19 consumers should look beyond the "CONTINUE" button to find additional content
20 below.
21

22 25. As a result of these inadequate disclosures, Defendants' websites
23 misrepresent the total cost of Defendants' trial products, and fail to adequately apprise
24 consumers that they are being enrolled in a continuity program.
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Defendants' Deceptive Order Completion Page

26. After clicking "GET MY RISK FREE TRIAL" or "CONTINUE" to order a trial of one of Defendants' products, consumers are then directed to a webpage that indicates that their order is not complete. For example, consumers who think they already have ordered a trial of Defendants' brain supplement Cerebral X are taken to a page on the same website that has a "Cerebral X" banner at the top but that indicates in large, red type directly beneath the banner, "Wait! Your Order is Not Complete!" That page then offers a "FREE" trial of the product VitaMood+, which, the ad indicates, should be "paired together" with Cerebral X.

CEREBRAL X
Advanced Cognitive Enhancer

Internet Exclusive Offer
Available to USA Residents Only

Wait! Your Order is Not Complete!

We want to offer you a free Vitamood+ trial bottle because we're so confident that when paired together with Cerebral X you'll see unparalleled results! There's no reason to feel blue. Add **Vitamood+** to your order.

SPECIAL

Hurry Limited Supplies Available

BOOST YOUR MOOD!
VITAMOOD+

- + INCREASES FEELINGS OF POSITIVITY & OPTIMISM
- + SUPPORTS EMOTIONAL HEALTH
- + ENCOURAGES BALANCED BRAIN CHEMISTRY

FOR A CALM, RELAXED STATE OF MIND
+ 10 CAPSULES • DIETARY SUPPLEMENT
SUPPORTS BALANCED BRAIN CHEMISTRY FOR POSITIVE MOOD

Add your **FREE TRIAL** bottle
Free Shipping Included!

Secure 256-bit SSL Encryption

COMPLETE CHECKOUT

MasterCard. Verified by
SecureCode. VISA

☒ Yes, add **Protect Package™** for \$6.95 to my order.

☐ No, I don't want to improve my mood.

PRIVACY VERIFIED CERTIFIED BY SECURITY VERIFIED BUSINESS VERIFIED VISA DISCOVER FedEx Express UPS UNITED STATES POSTAL SERVICE

Shop Online with Confidence

Terms & Conditions | Privacy Policy | Contact Us

2017 © Vita Mood Plus

By placing an order you will be enrolled in our membership program. This program will charge \$9.00 today and \$79.31 for your trial full-size product on the 15th day if you do not call to cancel the membership. You will receive a full-size bottle of the product for \$79.31 (\$84 included) every 30 days thereafter until you cancel. You can cancel or modify your membership anytime by calling 1-888-893-0323. Open 24 hours a day, 7 days a week. Product ship in 1-3 business days.

Figure 3

1 27. As noted in Fig. 3, Defendants represent that consumers have not completed
2 their order of the initial trial product until they click the “COMPLETE CHECKOUT”
3 button located under the advertisement for the second product.
4

5 28. But when consumers click the “COMPLETE CHECKOUT” button, they
6 are deemed by Defendants to have ordered a trial of both the original product and the
7 second product. If consumers do not click the “COMPLETE CHECKOUT” button,
8 however, they will still receive a trial of the first product.
9

10 29. Defendants represent that the second product is free, but in reality, the
11 consumer will be charged the full price of the product 18 days later. Defendants also will
12 enroll consumers who click the “COMPLETE CHECKOUT” button in a second
13 continuity program, meaning that consumers also will receive and be charged for
14 monthly shipments of the second product.
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17 30. As with Defendants’ initial offers, the “order completion” pages also fail to
18 disclose important terms and conditions of the offer. For example, the order page for the
19 VitaMood+ offer (Fig. 3) does not disclose adequately that Defendants will charge
20 consumers the full price of the product after 18 days, and will also enroll them in a
21 continuity program. These terms only appear in small, faint print well below the
22 prominent “COMPLETE CHECKOUT” button.
23
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25 31. Below the “COMPLETE CHECKOUT” button, and below a line-break, in
26 tiny, faint print, Defendants include a hyperlink that consumers can click to decline the
27 second offer. For example, the order page for the VitaMood+ offer, depicted in Fig. 3
28

1 above, includes a faint hyperlink that says “No, I don’t want to improve my mood.”
2 Consumers who click on this hyperlink are then redirected to a series of web pages that
3 make similar deceptive offers.
4

5 32. Once consumers place an order for one or more of Defendants’ products,
6 they receive a confirmation email that either does not list any charges associated with the
7 products or lists only the shipping and handling charge. The confirmation email thus
8 reinforces the false impression from the websites that, other than the obligation to pay
9 shipping and handling, the trial product is free.
10

11 ***Defendants’ Restrictive Cancellation and Refund Practices***
12

13 33. In numerous instances, consumers who ordered Defendants’ trial products
14 report that Defendants subsequently charge them without their knowledge or consent for
15 the full price of these products and sign them up for one or more continuity programs.
16 Many consumers subsequently attempt to cancel their enrollment in the continuity
17 program and to obtain a refund of Defendants’ unauthorized charges, but they often have
18 difficulty cancelling and obtaining a refund.
19
20

21 34. Consumers who call Defendants to cancel the trial and continuity program
22 often have difficulty reaching Defendants’ customer service representatives, despite
23 calling numerous times. Even if they are able to reach a customer service representative
24 to request cancellation, consumers report that they often continue to receive and be
25 charged for shipments of Defendants products even after cancelling. The same is
26 sometimes true when consumers use Defendants’ “easy” online cancellation.
27
28

35. Consumers who request a refund are often told that they cannot get one because, according to Defendants, their “terms and conditions” require that refund requests be made within 30 days. Where the refund period has not lapsed, consumers are told they can only get a refund if the trial product is returned unopened and at the consumer’s expense. Often, consumers who send back the trial product unopened and within the refund period are nevertheless refused a refund, with Defendants’ customer service representative telling them that Defendants never received the return shipment.

36. In many instances, consumers attempt to get their money back by initiating chargebacks with their credit card companies. In other instances, consumers receive refunds directly from Defendants only after they complain to the Better Business Bureau or a state regulatory agency. Even in those instances, however, Defendants have not always issued full refunds, but have refunded only the monthly continuity program charges.

VIOLATIONS OF THE FTC ACT

37. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

38. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

39. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and

1 that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C.
2 § 45(n).

3
4 **COUNT I**

5 ***Misrepresentations of the Price of the Trial Offers***

6 40. In numerous instances, in connection with the advertising, marketing,
7 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and
8 dietary supplements, Defendants have represented, directly or indirectly, expressly or by
9 implication, that Defendants will charge consumers at most only a shipping and handling
10 fee for a one-time shipment of Defendants' product.
11

12
13 41. In truth and in fact, in numerous instances in which Defendants have made
14 the representation set forth in paragraph 40 of this Complaint, Defendants have charged
15 consumers more than a shipping and handling fee for one or more shipments of
16 Defendants' product.
17

18 42. Therefore, Defendants' representation described in paragraph 40 of this
19 Complaint, is false and misleading, and constitutes a deceptive act or practice in violation
20 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
21

22 **COUNT II**

23 ***Misrepresentation that Order is Not Complete***

24
25 43. In numerous instances, in connection with the advertising, marketing,
26 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and
27 dietary supplements to consumers who have already ordered a trial of one of Defendants'
28

1 products, Defendants have represented, directly or indirectly, expressly or by implication,
2 that consumers' initial orders are not complete and that clicking the "COMPLETE
3 CHECKOUT" button will merely complete their initial orders.
4

5 44. In truth and in fact, in numerous instances in which Defendants have made
6 the representation set forth in paragraph 43 of this Complaint, consumers' initial orders
7 were complete, and clicking the "COMPLETE CHECKOUT" button ordered an
8 additional product and enrolled consumers in a continuity plan for that product.
9

10 45. Therefore, Defendants' representation described in paragraph 43 of this
11 Complaint is false and misleading, and constitutes a deceptive act or practice in violation
12 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
13

14 **COUNT III**

15 ***Failure to Disclose Adequately Material Terms of Trial Offer***

16 46. In numerous instances, in connection with the advertising, marketing,
17 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and
18 dietary supplements, Defendants have represented, directly or indirectly, expressly or by
19 implication, that consumers can obtain a trial of Defendants' product for the cost of
20 shipping and handling, or for free.
21

22 47. In numerous instances in which Defendants have made the representation set
23 forth in Paragraph 46 of this Complaint, Defendants have failed to disclose, or disclose
24 adequately to consumers, material terms and conditions of their offer, including:
25

26 (a) The total cost of the product;
27
28

1 (b) That Defendants will charge consumers the total cost of the trial
2 product upon the expiration of the trial period, typically 15 days;

3 (c) That Defendants will automatically enroll consumers in a continuity
4 plan with additional charges; and

5 (d) The cost of the continuity plan, and the frequency and duration of the
6 recurring charges.
7

8
9 48. Defendants' failure to disclose, or disclose adequately, the material
10 information described in Paragraph 47, above, in light of the representation described in
11 Paragraph 46, above, constitutes a deceptive act or practice in violation of Section 5(a) of
12 the FTC Act, 15 U.S.C. § 45(a).
13

14 **COUNT IV**

15 ***Unfairly Charging Consumers Without Authorization***

16
17 49. In numerous instances, Defendants have charged consumers without their
18 express informed consent.

19
20 50. Defendants' actions cause or are likely to cause substantial injury to
21 consumers that consumers cannot reasonably avoid themselves and that is not
22 outweighed by countervailing benefits to consumers or competition.
23

24 51. Therefore, Defendants' practices as described in Paragraph 49, above,
25 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.
26 §§ 45(a) and 45(n).
27

28 **VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT**

1 52. In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15
2 U.S.C. §§ 8401-05, which became effective on December 29, 2010. Congress passed
3 ROSCA because "[c]onsumer confidence is essential to the growth of online commerce.
4 To continue its development as a marketplace, the Internet must provide consumers with
5 clear, accurate information and give sellers an opportunity to fairly compete with one
6 another for consumers' business." Section 2 of ROSCA, 15 U.S.C. § 8401.
7

8
9 53. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging
10 consumers for goods or services sold in transactions effected on the Internet through a
11 negative option feature, as that term is defined in the Commission's Telemarketing Sales
12 Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller: (a) clearly and conspicuously
13 discloses all material terms of the transaction before obtaining the consumer's billing
14 information; (b) obtains the consumer's express informed consent before making the
15 charge; and (c) provides a simple mechanism to stop recurring charges. *See* 15 U.S.C.
16 § 8403.
17
18

19
20 54. The TSR defines a negative option feature as: "in an offer or agreement to
21 sell or provide any goods or services, a provision under which the consumer's silence or
22 failure to take an affirmative action to reject goods or services or to cancel the agreement
23 is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).
24

25 55. As described above, Defendants advertise and sell Defendants' skincare,
26 electronic cigarette, and dietary supplement products to consumers through a negative
27 option feature as defined by the TSR. *See* 16 C.F.R. § 310.2(w).
28

1 an unfair or deceptive act or practice in or affecting commerce in violation of Section
2 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3
4 **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

5 59. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a
6 “preauthorized” electronic fund transfer from a consumer’s account may be “authorized
7 by the consumer only in writing, and a copy of such authorization shall be provided to the
8 consumer when made.”

10 60. Section 903(10) of the EFTA, 15 U.S.C. § 1693a(10), provides that the term
11 “preauthorized electronic fund transfer” means “an electronic fund transfer authorized in
12 advance to recur at substantially regular intervals.”

14 61. Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), provides that
15 “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized
16 only by a writing signed or similarly authenticated by the consumer. The person that
17 obtains the authorization shall provide a copy to the consumer.”

19 62. Section 1005.10 of the Consumer Financial Protection Bureau’s Official
20 Staff Commentary to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 5, Supp. I, provides that
21 “[t]he authorization process should evidence the consumer’s identity and assent to the
22 authorization.” The Official Staff Commentary to Regulation E further provides that
23 “[a]n authorization is valid if it is readily identifiable as such and the terms of the
24 preauthorized transfer are clear and readily understandable.” 12 C.F.R. § 1005.10(b),
25 cmt. 6, Supp. I.

COUNT VI

Unauthorized Debiting from Consumers' Accounts

63. In numerous instances, Defendants debit consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

64. Further, in numerous instances, Defendants debit consumers' bank accounts on a recurring basis without providing a copy of written authorization signed or similarly authenticated by the consumer for preauthorized electronic fund transfers from the consumer's account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

65. Under Section 918(c) of the EFTA, 15 U.S.C. § 1693o(c), a violation of the EFTA and Regulation E constitutes a violation of the FTC Act.

66. Accordingly, by engaging in violations of the EFTA and Regulation E as alleged in Paragraphs 63 and 64 of this Complaint, Defendants have engaged in violations of the FTC Act. 15 U.S.C. § 1693o(c).

CONSUMER INJURY

67. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act, ROSCA, and the EFTA. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices.

Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

68. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

69. Section 5 of ROSCA, 15 U.S.C. § 8404, and Section 917(c) of the EFTA, 15 U.S.C. § 1693o(c), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, ROSCA, and the EFTA, including the rescission or reformation of contracts and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 5 of ROSCA, 15 U.S.C. § 8404, Section 917(c) of the EFTA, 15 U.S.C. § 1693o(c), and the Court's own equitable powers, requests that the Court:

- A. Award Plaintiff such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during

1 the pendency of this action and to preserve the possibility of effective final
2 relief, including but not limited to temporary and preliminary injunctions, an
3 order freezing assets, immediate access, and appointment of a receiver;
4

5 B. Enter a permanent injunction to prevent future violations of the FTC Act,
6 ROSCA, and the EFTA by Defendants;
7

8 C. Award such relief as the Court finds necessary to redress injury to
9 consumers resulting from Defendants' violations of the FTC Act, ROSCA,
10 and the EFTA, including but not limited to, rescission or reformation of
11 contracts, restitution, the refund of monies paid, and the disgorgement of ill-
12 gotten monies; and
13

14 D. Award Plaintiff the cost of bringing this action, as well as such other and
15 additional relief as the Court may determine to be just and proper.
16

17 Dated: October 19, 2018

Respectfully submitted,

18 ALDEN F. ABBOTT
19 General Counsel

20
21 /s/Samantha Gordon
22 Samantha Gordon
23 Matthew H. Wernz
24 Federal Trade Commission
25 Midwest Region
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312-960-5623 (Gordon)

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312-960-5596 (Wernz)

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12 ATTORNEYS FOR PLAINTIFF

13
14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17 FEDERAL TRADE COMMISSION,
18 Plaintiff,

19 v.

20 ~~TRIANGLE MEDIA CORPORATION, a~~
21 ~~Delaware corporation, also doing business~~
22 ~~as Triangle CRM, Phenom Health, Beauty~~
23 ~~and Truth, and E-Cigs;~~

24 ~~JASPER RAIN MARKETING LLC, a~~
25 ~~California limited liability company, also~~
26 ~~doing business as Cranium Power and~~
27 ~~Phenom Health;~~

28 ~~HARDWIRE INTERACTIVE INC., a~~
~~British Virgin Islands corporation, also~~
~~doing business as Phenom Health, Beauty~~
~~and Truth, and E-Cigs; and~~

Case No.: 18-cv-1388-MMA (NLS)
FIRST AMENDED COMPLAINT

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**
FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF

Judge: Hon. Michael M. Anello

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{Case-No.}

18-cv-1388-MMA (NLS)
FIRST AMENDED COMPLAINT

1 ~~BRIAN PHILLIPS, individually and as an~~
2 ~~officer of Triangle Media Corporation,~~
3 TRIANGLE MEDIA CORPORATION, a
4 Delaware corporation, also doing business
5 as Triangle CRM, Phenom Health, Beauty
6 and Truth, and E-Cigs;

7 JASPER RAIN MARKETING LLC, a
8 California limited liability company, also
9 doing business as Cranium Power and
10 Phenom Health;

11 HARDWIRE INTERACTIVE INC., a
12 British Virgin Islands corporation, also
13 doing business as Phenom Health, Beauty
14 and Truth, and E-Cigs;

15 GLOBAL NORTHERN TRADING
16 LIMITED, a Canadian corporation;

17 BRIAN PHILLIPS, individually and as an
18 officer of Triangle Media Corporation;

19 and

20 DEVIN KEER, individually and as an
21 officer of Triangle Media Corporation and
22 Hardwire Interactive.

23 Defendants.

24 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), for its
25 Complaint alleges:

26 1. The FTC brings this action under Section 13(b) of the Federal Trade
27 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), Section 5 of the Restore Online

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{Case-No.}

18-cv-1388-MMA (NLS)
FIRST AMENDED COMPLAINT

Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404, and Section 918(c) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b); and Section 5(a) of ROSCA, 15 U.S.C. § 8404(a).

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(1), (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. Additionally, the FTC enforces ROSCA, 15 U.S.C. §§ 8401-05, which

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1 prohibits certain methods of negative option marketing on the Internet, as well as the
 2 EFTA, 15 U.S.C. § 1693 *et seq.*, which regulates the rights, liabilities, and
 3 responsibilities of participants in electronic fund transfer systems.
 4

5 5. The FTC is authorized to initiate federal district court proceedings, by its
 6 own attorneys, to enjoin violations of the FTC Act, ROSCA, and the EFTA, and to secure
 7 such equitable relief as may be appropriate in each case, including rescission or
 8 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
 9 ill-gotten monies. -15 U.S.C. §§ 53(b), 8404, and 1693o(c).
 10

11 DEFENDANTS

12
 13 6. Defendant **Triangle Media Corporation** ("Triangle Media"), also doing
 14 business as Triangle CRM, Phenom Health, Beauty and Truth, and E-Cigs, is a Delaware
 15 corporation registered at 108 West 13th Street, Wilmington, Delaware 19801. Its
 16 principal place of business was 1350 Columbia Street, San Diego, California 92101 until
 17 May 17, 2018, when it filed paperwork with the California Secretary of State changing its
 18 principal place of business to 4519 George Road, Tampa, Florida 33634. At all times
 19 material to this complaint, acting alone or in concert with others, Triangle Media
 20 Corporation has advertised, marketed, distributed, or sold skincare products, electronic
 21 cigarettes, and dietary supplements to consumers throughout the United States. Triangle
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1 Media transacts or has transacted business in this district and throughout the United
2 States.

3
4 7. Defendant **Jasper Rain Marketing LLC** (“Jasper Rain”), also doing
5 business as Cranium Power and Phenom Health, is a California limited liability company
6 registered and with its principal place of business at 4370 La Jolla Village Drive, Suite
7 400, San Diego, California 92122. At all times material to this complaint, acting alone or
8 in concert with others, Jasper Rain has advertised, marketed, distributed or sold dietary
9 supplements to consumers throughout the United States. Jasper Rain transacts or has
10 transacted business in this district and throughout the United States.
11

12
13 8. Defendant **Hardwire Interactive Inc.** (“Hardwire Interactive”), also doing
14 business as Phenom Health, Beauty and Truth, and E-Cigs, is a British Virgin Islands
15 corporation with its principal place of business at R.G. Hodge Plaza 3/Floor, Upper Main
16 Street, Wickham’s Cay 1, Road Town, Tortola, British Virgin Islands. At all times
17 material to this complaint, acting alone or in concert with others, Hardwire Interactive
18 has advertised, marketed, distributed or sold skincare products, electronic cigarettes, and
19 dietary supplements to consumers throughout the United States. Hardwire Interactive
20 transacts or has transacted business in this district and throughout the United States.
21

22
23 9. Defendant **Global Northern Trading Limited** (“Global Northern”), is a
24 Canadian corporation with its principal place of business at 205-2964 Trethewey St.,
25
26

1 Abbotsford, British Columbia, V2T 6PA, Canada. At all times material to this complaint,
 2 acting alone or in concert with others, Global Northern has advertised, marketed,
 3 distributed or sold skin care products, electronic cigarettes, and dietary supplements to
 4 consumers throughout the United States. Global Northern transacts or has transacted
 5 business in this district and throughout the United States.

7
 8 9.10. Defendant **Brian Phillips** is an owner and officer of Triangle Media. At all
 9 times material to this complaint, acting alone or in concert with others, he has formulated,
 10 directed, controlled, had the authority to control, or participated in the acts and practices
 11 of **Triangle Media, Jasper Rain, and Hardwire Interactive, and Global Northern,**
 12 including the acts and practices set forth in this Complaint. Defendant Phillips resides in
 13 this district and, in connection with the matters alleged herein, transacts or has transacted
 14 business in this district and throughout the United States. Among other things, Defendant
 15 Phillips has had the authority to control the advertising and marketing of Defendants'
 16 products, including by registering websites used to track Defendants' online advertising
 17 and marketing activities; the processing of payments from consumers victimized by
 18 Defendants' practices, including by having signatory authority over bank accounts used
 19 to receive and process consumer payments; and Defendants' customer service operations,
 20 including Defendants' restrictive cancellation and refund policies.
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11. Defendant **Devin Keer** has been an owner and officer of Triangle Media Corporation and Hardwire Interactive. At all times relevant to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of **Triangle Media, Jasper Rain, Hardwire Interactive, and Global Northern**, including the acts and practices set forth in this Complaint. Defendant Keer, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. Among other things, Defendant Keer has had the authority to control the advertising and marketing of Defendants' products, including overseeing the Corporate Defendants' overall business strategy and operations, paying for registration of the deceptive websites, entering into contracts with advertisers, and managing distribution and fulfillment of Defendants' products.

~~10.12.~~ Defendants **Triangle Media, Jasper Rain, and Hardwire Interactive, and Global Northern** (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive and unfair acts and practices and other violations of the law alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations and that use common business names and commingle funds. Because these Corporate

1 Defendants have operated as a common enterprise, each of them is jointly and severally
 2 liable for the acts and practices alleged below. ~~Defendant~~Defendants Phillips ~~has~~and
 3 Keer have formulated, directed, controlled, had the authority to control, or participated in
 4 the acts and practices of the Corporate Defendants that constitute the common enterprise.
 5

6 COMMERCE

7 ~~11.13.~~13. At all times material to this complaint, Defendants have maintained a
 8 substantial course of trade in or affecting commerce, as “commerce” is defined in Section
 9 4 of the FTC Act, 15 U.S.C. § 44.
 10

11 DEFENDANTS’ BUSINESS PRACTICES

12 ~~12.14.~~14. Defendants advertise, market, promote, distribute, and sell skincare
 13 products, electronic cigarettes, and dietary supplements online. Defendants claim to offer
 14 trials of these products for just the cost of shipping and handling, typically \$4.95 or less.
 15 Instead, Defendants charge consumers who accept the trial offers as much as \$98.71 for a
 16 single shipment and enroll them in a continuity program costing the same amount on a
 17 monthly basis. Additionally, Defendants frequently also charge consumers for additional
 18 products and enroll consumers in continuity programs related to these additional
 19 products, all without the consumers’ knowledge or consent. Consumers who discover
 20 Defendants’ charges and seek a refund often find that they are unable to get their money
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1 back because of Defendants' undisclosed refund restrictions. Defendants have brought in
 2 tens of millions of dollars through their deceptive trial offers.

3
 4 ***Defendants' Deceptive Trial Offers***

5 ~~13~~15. Defendants advertise through third-party websites, blog posts, banner
 6 advertisements, and surveys, offering consumers a "trial" of products such as "Wrinkle
 7 Rewind," "ProVapor," "Cerebral X," "Test X Core," and "Garcinia Clean XT." These
 8 advertisements often say that consumers can receive a "trial" for just the cost of shipping
 9 and handling. When consumers click on these advertisements, they are directed to
 10 Defendants' websites, which include findbeautyandtruth.com, trycerebralx.com,
 11 tryphenomcore.com, tryprovapor.com, and trygarciniaclean.com.

12
 13
 14 ~~14~~16. Defendants' websites offer consumers a "RISK FREE" trial of one of
 15 Defendants' products. The websites create a sense of urgency by telling consumers there
 16 is a limited supply of the trial product and that they need to act quickly. Representative
 17 statements include:

- 18
 19
 20 • Warning: Due to extremely high media demand, there is limited supply
 21 of [PRODUCT] in stock as of [today's date]. HURRY!
 22
 23 • ONLY [X] NUMBER OF TRIALS AVAILABLE NOW!
 24
 25
 26

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 28

- 1 • ATTENTION: Due to high demand from recent media coverage we can
2 no longer guarantee supply. As of [TODAY'S DATE] we currently
3 have product in-stock and will ship within 24 hours of purchase.
4

5 The websites also prominently display the logos of news organizations such as CBS
6 News, NBC, Fox News, and CNN, suggesting that these products have been featured on
7 those outlets.
8

9 ~~15~~.17. Consumers who are interested in the trial offer are asked to provide their
10 contact information. Upon doing so, consumers are directed to a payment page on which
11 Defendants request their credit or debit card information and represent that consumers
12 need to pay only a shipping and handling charge, typically \$4.95 or less, to receive a trial
13 of Defendants' product. Defendants' websites prominently state that the "Total" cost of
14 the product is equal to the cost of shipping and handling. As shown in the screenshot
15 below of Defendants' website for Cerebral X, for example, Defendants list the shipping
16 cost of \$4.95 and highlight the "Total," also \$4.95, in yellow:
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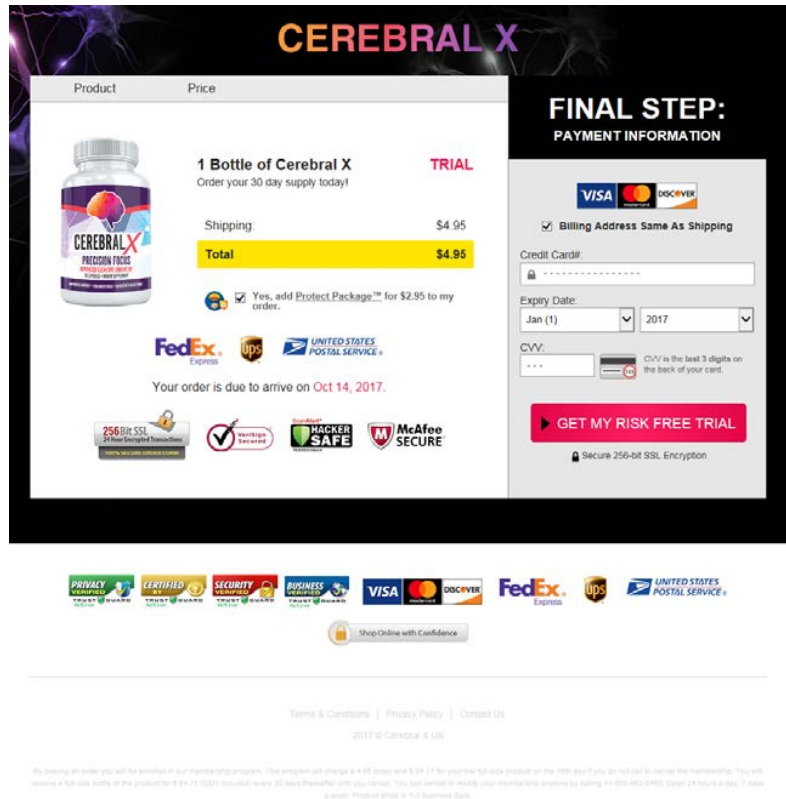


Figure 1

16-18. Similarly, in the following screenshots of Defendants' website for Garcinia Clean XT as depicted on a mobile device, Defendants list the "Price" of the product as \$0.00, highlighted in green, the \$4.95 shipping and handling charge, and a "Total" of \$4.95 in bold, followed by a request for billing information when consumers scroll down on their mobile device:

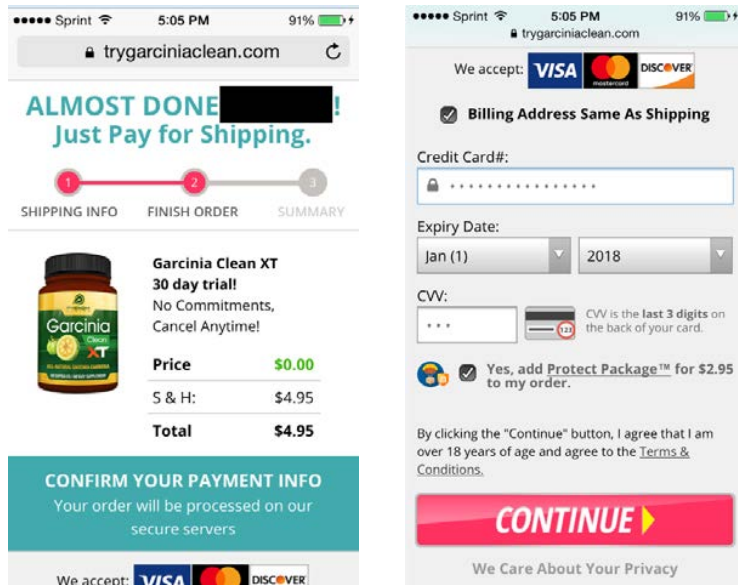


Figure 2

~~17-19.~~ Once consumers enter their billing information, they are asked to place their order by clicking a brightly colored button labeled either “GET MY RISK FREE TRIAL” or “CONTINUE.”

~~18-20.~~ Unbeknownst to consumers, 15 days after they click “GET MY RISK FREE TRIAL” or “CONTINUE,” Defendants will charge consumers the full price of the product—as much as \$98.71.

~~19-21.~~ Defendants also enroll consumers who accept the trial offer into a continuity program. Under the continuity program, Defendants send consumers additional

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1 shipments of the product each month and charge consumers' credit or debit cards the full
2 price of each product shipped.

3 ~~20-22~~ Consumers typically only learn that the trial was not free and that they have
4 been enrolled in a continuity program when they see Defendants' monthly charges on
5 their credit card or bank statements.

6 ~~21-23~~ As Figs. 1 and 2 illustrate, Defendants either hide the terms of their offer in
7 barely discernable print- far below the colorful graphics and text where consumers input
8 their personal and payment information and continue with their purchase, or bury them in
9 a separate "Terms & Conditions" hyperlink. Those terms typically reveal that the
10 consumer has a limited time to cancel the trial, usually 15 days, or the consumer will be
11 charged the full price of the product. The terms also state that the consumer will receive
12 and be charged for additional shipments of the product every 30 days until they cancel.

13 ~~22-24~~ On the desktop page depicted in Fig. 1, consumers would not encounter
14 these terms unless they were to look closely at the small, faint type far below where they
15 enter their payment information and click "GET MY RISK FREE TRIAL." On the
16 mobile pages depicted in Fig. 2, to see the terms, consumers would need to click on the
17 separate "terms and conditions" hyperlink or scroll past the large, brightly colored
18 "CONTINUE" button. But there is nothing on the billing screen in Fig. 2 to indicate that
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1 consumers should look beyond the “CONTINUE” button to find additional content
2 below.

3 ~~23-25.~~ As a result of these inadequate disclosures, Defendants’ websites
4 misrepresent the total cost of Defendants’ trial products, and fail to adequately apprise
5 consumers that they are being enrolled in a continuity program.
6

7 *Defendants’ Deceptive Order Completion Page*
8


9 ~~24-26.~~ After clicking “GET MY RISK FREE TRIAL” or “CONTINUE” to order a
10 trial of one of Defendants’ products, consumers are then directed to a webpage that
11 indicates that their order is not complete. For example, consumers who think they
12 already have ordered a trial of Defendants’ brain supplement Cerebral X are taken to a
13 page on the same website that has a “Cerebral X” banner at the top but that indicates in
14 large, red type directly beneath the banner, “Wait! Your Order is Not Complete!” That
15 page then offers a “FREE” trial of the product VitaMood+, which, the ad indicates,
16 should be “paired together” with Cerebral X.
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CEREBRAL X
Advanced Cognitive Enhancer

Internet Exclusive Offer
Available to USA Residents Only

Wait! Your Order is Not Complete!

We want to offer you a free Vitamood+ trial bottle because we're so confident that when paired together with Cerebral X you'll see unparalleled results! There's no reason to feel blue. Add **Vitamood+** to your order.

SPECIAL


Hurry Limited Supplies Available

BOOST YOUR MOOD!

VITAMOOD+

- + INCREASES FEELINGS OF POSITIVITY & OPTIMISM
- + SUPPORTS EMOTIONAL HEALTH
- + ENCOURAGES BALANCED BRAIN CHEMISTRY

Add your **FREE TRIAL** bottle

Free Shipping Included!

Secure 256-bit SSL Encryption

COMPLETE CHECKOUT

MasterCard. SecureCode. Verified by VISA

☒ Yes, add Protect Package™ for \$6.95 to my order.

☐ No, I don't want to improve my mood.

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BY
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SECURITY
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By placing an order you will be enrolled in our membership program. This program will charge \$9.99 today and \$14.99 for your first full-size product on the 10th day if you do not opt to cancel the membership. You will receive a full-size bottle of the product for \$19.99 (88¢) (indicated) every 30 days thereafter until you cancel. You can cancel or modify your membership anytime by calling 1-800-883-0383. Open 24 hours a day, 7 days a week. Product ship in 1-3 business days.

Figure 3

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1 ~~25-27~~. As noted in Fig. 3, Defendants represent that consumers have not completed
2 their order of the initial trial product until they click the “COMPLETE CHECKOUT”
3 button located under the advertisement for the second product.
4

5 ~~26-28~~. But when consumers click the “COMPLETE CHECKOUT” button, they
6 are deemed by Defendants to have ordered a trial of both the original product and the
7 second product. If consumers do not click the “COMPLETE CHECKOUT” button,
8 however, they will still receive a trial of the first product.
9

10 ~~27-29~~. Defendants represent that the second product is free, but in reality, the
11 consumer will be charged the full price of the product 18 days later. Defendants also will
12 enroll consumers who click the “COMPLETE CHECKOUT” button in a second
13 continuity program, meaning that consumers also will receive and be charged for
14 monthly shipments of the second product.
15

16 ~~28-30~~. As with Defendants’ initial offers, the “order completion” pages also fail to
17 disclose important terms and conditions of the offer. For example, the order page for the
18 VitaMood+ offer (Fig. 3) does not disclose adequately that Defendants will charge
19 consumers the full price of the product after 18 days, and will also enroll them in a
20 continuity program. These terms only appear in small, faint print well below the
21 prominent “COMPLETE CHECKOUT” button.
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1 ~~29-31.~~ Below the “COMPLETE CHECKOUT” button, and below a line-break, in
 2 tiny, faint print, Defendants include a hyperlink that consumers can click to decline the
 3 second offer. For example, the order page for the VitaMood+ offer, depicted in Fig. 3
 4 above, includes a faint hyperlink that says “No, I don’t want to improve my mood.”
 5 Consumers who click on this hyperlink are then redirected to a series of web pages that
 6 make similar deceptive offers.
 7

8 ~~30-32.~~ Once consumers place an order for one or more of Defendants’ products,
 9 they receive a confirmation email that either does not list any charges associated with the
 10 products or lists only the shipping and handling charge. The confirmation email thus
 11 reinforces the false impression from the websites that, other than the obligation to pay
 12 shipping and handling, the trial product is free.
 13

14
 15 *Defendants’ Restrictive Cancellation and Refund Practices*
 16

17 ~~34-33.~~ In numerous instances, consumers who ordered Defendants’ trial products
 18 report that Defendants subsequently charge them without their knowledge or consent for
 19 the full price of these products and sign them up for one or more continuity programs.
 20 Many consumers subsequently attempt to cancel their enrollment in the continuity
 21 program and to obtain a refund of Defendants’ unauthorized charges, but they often have
 22 difficulty cancelling and obtaining a refund.
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1 ~~32-34~~. Consumers who call Defendants to cancel the trial and continuity program
2 often have difficulty reaching Defendants' customer service representatives, despite
3 calling numerous times. Even if they are able to reach a customer service representative
4 to request cancellation, consumers report that they often continue to receive and be
5 charged for shipments of Defendants products even after cancelling. The same is
6 sometimes true when consumers use Defendants' "easy" online cancellation.
7

8 ~~33-35~~. Consumers who request a refund are often told that they cannot get one
9 because, according to Defendants, their "terms and conditions" require that refund
10 requests be made within 30 days. Where the refund period has not lapsed, consumers are
11 told they can only get a refund if the trial product is returned unopened and at the
12 consumer's expense. Often, consumers who send back the trial product unopened and
13 within the refund period are nevertheless refused a refund, with Defendants' customer
14 service representative telling them that Defendants never received the return shipment.
15

16 ~~34-36~~. In many instances, consumers attempt to get their money back by initiating
17 chargebacks with their credit card companies. In other instances, consumers receive
18 refunds directly from Defendants only after they complain to the Better Business Bureau
19 or a state regulatory agency. Even in those instances, however, Defendants have not
20 always issued full refunds, but have refunded only the monthly continuity program
21 charges.
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VIOLATIONS OF THE FTC ACT

~~35-37~~. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

~~36-38~~. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

~~37-39~~. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT I

Misrepresentations of the Price of the Trial Offers

~~38-40~~. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of skin care products, electronic cigarettes, and dietary supplements, Defendants have represented, directly or indirectly, expressly or by implication, that Defendants will charge consumers at most only a shipping and handling fee for a one-time shipment of Defendants’ product.

~~39-41~~. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in paragraph ~~38~~40 of this Complaint, Defendants have

1 charged consumers more than a shipping and handling fee for one or more shipments of
 2 Defendants' product.

3
 4 ~~40-42~~. Therefore, Defendants' representation described in paragraph ~~38~~40 of this
 5 Complaint, is false and misleading, and constitutes a deceptive act or practice in violation
 6 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 8 **COUNT II**

9 ***Misrepresentation that Order is Not Complete***

10 ~~41-43~~. In numerous instances, in connection with the advertising, marketing,
 11 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and
 12 dietary supplements to consumers who have already ordered a trial of one of Defendants'
 13 products, Defendants have represented, directly or indirectly, expressly or by implication,
 14 that consumers' initial orders are not complete and that clicking the "COMPLETE
 15 CHECKOUT" button will merely complete their initial orders.
 16

17
 18 ~~42-44~~. In truth and in fact, in numerous instances in which Defendants have made
 19 the representation set forth in paragraph ~~41~~43 of this Complaint, consumers' initial orders
 20 were complete, and clicking the "COMPLETE CHECKOUT" button ordered an
 21 additional product and enrolled consumers in a continuity plan for that product.
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1 ~~43-45~~. Therefore, Defendants' representation described in paragraph ~~44~~43 of this
 2 Complaint is false and misleading, and constitutes a deceptive act or practice in violation
 3 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
 4

5 **COUNT III**

6 *Failure to Disclose Adequately Material Terms of Trial Offer*

7 ~~44-46~~. In numerous instances, in connection with the advertising, marketing,
 8 promotion, offering for sale, or sale of skin care products, electronic cigarettes, and
 9 dietary supplements, Defendants have represented, directly or indirectly, expressly or by
 10 implication, that consumers can obtain a trial of Defendants' product for the cost of
 11 shipping and handling, or for free.
 12

13 ~~45-47~~. In numerous instances in which Defendants have made the representation set
 14 forth in Paragraph ~~44~~46 of this Complaint, Defendants have failed to disclose, or disclose
 15 adequately to consumers, material terms and conditions of their offer, including:
 16

- 17 (a) The total cost of the product;
- 18 (b) That Defendants will charge consumers the total cost of the trial
- 19 product upon the expiration of the trial period, typically 15 days;
- 20 (c) That Defendants will automatically enroll consumers in a continuity
- 21 plan with additional charges; and
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(d) The cost of the continuity plan, and the frequency and duration of the recurring charges.

~~46-48.~~ Defendants' failure to disclose, or disclose adequately, the material information described in Paragraph ~~45~~47, above, in light of the representation described in Paragraph ~~44~~46, above, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

Unfairly Charging Consumers Without Authorization

~~47-49.~~ In numerous instances, Defendants have charged consumers without their express informed consent.

~~48-50.~~ Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

~~49-51.~~ Therefore, Defendants' practices as described in Paragraph ~~47~~49, above, constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

~~50-52.~~ In 2010, Congress passed the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401-05, which became effective on December 29, 2010. Congress passed

1 ROSCA because “[c]onsumer confidence is essential to the growth of online commerce.
 2 To continue its development as a marketplace, the Internet must provide consumers with
 3 clear, accurate information and give sellers an opportunity to fairly compete with one
 4 another for consumers’ business.” Section 2 of ROSCA, 15 U.S.C. § 8401.

5 ~~51-53~~. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging
 6 consumers for goods or services sold in transactions effected on the Internet through a
 7 negative option feature, as that term is defined in the Commission’s Telemarketing Sales
 8 Rule (“TSR”), 16 C.F.R. § 310.2(w), unless the seller: (a) clearly and conspicuously
 9 discloses all material terms of the transaction before obtaining the consumer’s billing
 10 information; (b) obtains the consumer’s express informed consent before making the
 11 charge; and (c) provides a simple mechanism to stop recurring charges. *See* 15 U.S.C.
 12 § 8403.

13 ~~52-54~~. The TSR defines a negative option feature as: “in an offer or agreement to
 14 sell or provide any goods or services, a provision under which the consumer’s silence or
 15 failure to take an affirmative action to reject goods or services or to cancel the agreement
 16 is interpreted by the seller as acceptance of the offer.” 16 C.F.R. § 310.2(w).

17 ~~53-55~~. As described above, Defendants advertise and sell Defendants’ skincare,
 18 electronic cigarette, and dietary supplement products to consumers through a negative
 19 option feature as defined by the TSR. *See* 16 C.F.R. § 310.2(w).

~~54-56.~~ Under Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, and therefore constitutes an unfair or deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT V

Violation of ROSCA – Auto-Renewal Continuity Plan

~~55-57.~~ In numerous instances, in connection with the selling of their products on the Internet through a negative option feature, Defendants have failed to:

- (a) clearly and conspicuously disclose all material terms of the negative option feature of the product transaction before obtaining the consumer's billing information;
- (b) obtain the consumer's express informed consent to the negative option feature before charging the consumer's credit card, debit card, bank account, or other financial account for the transaction; and/or
- (c) provide simple mechanisms for a consumer to stop recurring charges for products to the consumer's credit card, debit card, bank account, or other financial account.

~~56-58.~~ Defendants' practices as set forth in Paragraph ~~55~~57 are a violation of Section 4 of ROSCA, 15 U.S.C. § 8403, and are therefore a violation of a rule

1 promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a, 15 U.S.C. § 8404(a), and
 2 therefore constitute an unfair or deceptive act or practice in or affecting commerce in
 3 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
 4

5 **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

6 ~~57-59~~.Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a
 7 “preauthorized” electronic fund transfer from a consumer’s account may be “authorized
 8 by the consumer only in writing, and a copy of such authorization shall be provided to the
 9 consumer when made.”
 10

11 ~~58-60~~.Section 903(10) of the EFTA, 15 U.S.C. § 1693a(10), provides that the term
 12 “preauthorized electronic fund transfer” means “an electronic fund transfer authorized in
 13 advance to recur at substantially regular intervals.”
 14

15 ~~59-61~~.Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), provides that
 16 “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized
 17 only by a writing signed or similarly authenticated by the consumer. The person that
 18 obtains the authorization shall provide a copy to the consumer.”
 19

20 ~~60-62~~.Section 1005.10 of the Consumer Financial Protection Bureau’s Official
 21 Staff Commentary to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 5, Supp. I, provides that
 22 “[t]he authorization process should evidence the consumer’s identity and assent to the
 23 authorization.” The Official Staff Commentary to Regulation E further provides that
 24
 25
 26

1 “[a]n authorization is valid if it is readily identifiable as such and the terms of the
 2 preauthorized transfer are clear and readily understandable.” 12 C.F.R. § 1005.10(b),
 3 cmt. 6, Supp. I.

5 **COUNT VI**

6 *Unauthorized Debiting from Consumers’ Accounts*

7 ~~61-63.~~ In numerous instances, Defendants debit consumers’ bank accounts on a
 8 recurring basis without obtaining a written authorization signed or similarly authenticated
 9 from consumers for preauthorized electronic fund transfers from their accounts, thereby
 10 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of
 11 Regulation E, 12 C.F.R. § 1005.10(b).
 12

13 ~~62-64.~~ Further, in numerous instances, Defendants debit consumers’ bank accounts
 14 on a recurring basis without providing a copy of written authorization signed or similarly
 15 authenticated by the consumer for preauthorized electronic fund transfers from the
 16 consumer’s account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),
 17 and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b).
 18

19 ~~63-65.~~ Under Section 918(c) of the EFTA, 15 U.S.C. § 1693o(c), a violation of the
 20 EFTA and Regulation E constitutes a violation of the FTC Act.
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 22
 23
 24
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1 ~~64-66~~. Accordingly, by engaging in violations of the EFTA and Regulation E as
 2 alleged in Paragraphs ~~61-63~~ and ~~62-64~~ of this Complaint, Defendants have engaged in
 3 violations of the FTC Act. 15 U.S.C. § 1693o(c).
 4

5 CONSUMER INJURY

6 ~~65-67~~. Consumers have suffered and will continue to suffer substantial injury as a
 7 result of Defendants' violations of the FTC Act, ROSCA, and the EFTA. In addition,
 8 Defendants have been unjustly enriched as a result of their unlawful acts or practices.
 9 Absent injunctive relief by this Court, Defendants are likely to continue to injure
 10 consumers, reap unjust enrichment, and harm the public interest.
 11

12 THIS COURT'S POWER TO GRANT RELIEF

13 ~~66-68~~. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
 14 grant injunctive and such other relief as the Court may deem appropriate to halt and
 15 redress violations of any provision of law enforced by the FTC. The Court, in the
 16 exercise of its equitable jurisdiction, may award ancillary relief, including rescission or
 17 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
 18 ill-gotten monies, to prevent and remedy any violation of any provision of law enforced
 19 by the FTC.
 20

21 ~~67-69~~. Section 5 of ROSCA, 15 U.S.C. § 8404, and Section 917(c) of the EFTA, 15
 22 U.S.C. § 1693o(c), authorize this Court to grant such relief as the Court finds necessary
 23

1 to redress injury to consumers resulting from Defendants' violations of the FTC Act,
2 ROSCA, and the EFTA, including the rescission or reformation of contracts and the
3 refund of money.
4

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C.
7 § 53(b), Section 5 of ROSCA, 15 U.S.C. § 8404, Section 917(c) of the EFTA, 15 U.S.C.
8 § 1693o(c), and the Court's own equitable powers, requests that the Court:
9

- 10 A. Award Plaintiff such temporary and preliminary injunctive and ancillary
11 relief as may be necessary to avert the likelihood of consumer injury during
12 the pendency of this action and to preserve the possibility of effective final
13 relief, including but not limited to temporary and preliminary injunctions, an
14 order freezing assets, immediate access, and appointment of a receiver;
15
16 B. Enter a permanent injunction to prevent future violations of the FTC Act,
17 ROSCA, and the EFTA by Defendants;
18
19 C. Award such relief as the Court finds necessary to redress injury to
20 consumers resulting from Defendants' violations of the FTC Act, ROSCA,
21 and the EFTA, including but not limited to, rescission or reformation of
22 contracts, restitution, the refund of monies paid, and the disgorgement of ill-
23 gotten monies; and
24
25
26

1 D. Award Plaintiff the cost of bringing this action, as well as such other and
2 additional relief as the Court may determine to be just and proper.

3
4 Dated: ~~June 22~~October 19, 2018

Respectfully submitted,

5 ALDEN F. ABBOTT
6 General Counsel

7
8
9 Gordon _____/s/Samantha

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